THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO.211 of 2006

Dated: 24-01-2006

Vakapalli Swamy Naidu.

..... PETITIONERS

AND

Amalapuram Municipality.

....RESPONDENT

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION NO.211 of 2006

ORDER:

The petitioner is a resident of Amalapuram. He filed the instant writ petition seeking a direction to the sole respondent to conduct public auction for lease of shops bearing Nos.1A and 1B situated at Gandhi center in Amalapuram town after giving notice to the petitioner.

It is the case of the petitioner that the shops were leased out by the respondent-Municipality and when the lessee failed to pay the rents, the lease was cancelled and that the Municipality issued an auction notice on 21-11-2005 proposing to conduct auction on 28-11-2005. It is the further case of the petitioner that on 28-11-2005, auction was not conducted and the petitioner was informed that auction would be conducted on 12-12-2005. But even on 12-12-2005, auction was not conducted and therefore, he filed the present writ petition.

At the stage of admission itself, the learned standing counsel for respondent-Municipality obtained instructions from the respondent. He submits that as the earlier lessee failed to pay the arrears of rent, the Municipal Council passed a resolution cancelling the lease and decided to auction the shops. Accordingly auction was notified, but on the date of auction except the petitioner none was present. Meanwhile the earlier lessee paid a sum of Rs.27,000/- and requested to continue the lease and the request of the earlier lessee was placed before the Municipal Council. He, however, does not dispute that the Municipal Council did not pass any resolution in favour of the earlier lessee.

In exercise of powers under Section 326 (1) of the Andhra Pradesh Municipalities Act, 1965 ('the Act' for brevity), the Government of Andhra Pradesh promulgated Andhra Pradesh Municipalities (Regulation of Receipts and Expenditures) Rules, 1968 ('the Rules' for brevity). Rule 12(1) of the Rules mandates that all sales of the produce or usufruct of trees, wind fallen and withered trees, tools and plant, old stores and materials, leases of the buildings etc.,. shall be affected by the Municipality by public auction which shall be conducted by the Commissioner after giving full publicity thereto. The lease granted after conducting public auction is governed by the terms of the lease and initially the lease is granted for a period of three years at a time. Therefore, when once the municipal shops are vacant it is incumbent on the part of the respondent to conduct public auction. In this case auction notice was issued on 21-11-2005 proposing to conduct auction on 28-11-2005. For some reason or the other, the auction could not be conducted and again auction was notified on 07-12-2005 proposing to conduct auction on 12-12-2005. Therefore, there cannot be any legal impediment for conducting fresh auction. The legal position is neither disputed nor denied by the learned standing counsel.

As the respondent-Municipality has already initiated action for auctioning the two vacant shops in Gandhi center, a direction is issued to complete the auction, if necessary by inviting participation by fresh notification, in accordance with the Rules referred to hereinabove. This exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

With the above directions, the writ petition is disposed of. No costs.

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(**V.V.S.RAO, J**)

24th January 2006

ghn